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AO 106 (Rev. 04/10) Application for Search Warrant

SEP - 6 2013

## UNITED STATES DISTRICT COURT

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

for the  
Western District of Washington

In the Matter of the Search of

(Briefly describe the property to be searched  
or identify the person by name and address)

The account more fully described in Attachment B to this  
Warrant Application, attached hereto and incorporated  
herein by reference

Case No.

MJ13-445

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):  
The account more fully described in Attachment B

located in the Western District of Washington, there is now concealed (identify the person or describe the property to be seized):  
See Attachment C

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;  
☒ contraband, fruits of crime, or other items illegally possessed;  
☒ property designed for use, intended for use, or used in committing a crime;  
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
§§ 44, 45, 47, 68 of Crimes Act 1958 (Victoria); § 474.22 of the Criminal Code 1995	Pursuant to MLAT, violations of Australia's criminal code related to incest, sexual penetration of a minor, indecent assault of a minor, production of child pornography, and use of a carriage service for child abuse material

The application is based on these facts:

See Affidavit of Homeland Security Investigation Special Agent Cao Triet (Dan) Huynh.

- ☒ Continued on the attached sheet.  
☒ Delayed notice of 30 days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

HSI Special Agent Cao Triet (Dan) Huynh

Printed name and title

Sworn to before me and signed in my presence.

Date:

Sept 6, 2013

City and state: Seattle, WA

Judge's signature

U.S. Magistrate Judge Mary Alice Theiler

Printed name and title

ATTACHMENT A

OFFENCE PROVISIONS

***Crimes Act 1958 (Victoria)***

**44. Incest**

(1) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child.

Penalty: Level 2 imprisonment (25 years maximum).

(2) A person must not take part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant or the step-child of his or her de facto spouse. Penalty: Level 2 imprisonment (25 years maximum).

**45. Sexual penetration of child under the age of 16**

(1) A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence.

(2) A person who is guilty of an offence against subsection (1) is liable-

(a) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 12, to level 2 imprisonment (25 years maximum); or

(b) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 12 and 16 and under the care, supervision or authority of the accused, to level 4 imprisonment (15 years maximum); or

(c) in any other case of sexual penetration of a child between the ages of 12 and 16, to level 5 imprisonment (10 years maximum).

**47. Indecent act with child under the age of 16**

(1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married. Penalty: Level 5 imprisonment (10 years maximum).

**68. Production of child pornography**

(1) A person who prints or otherwise makes or produces child pornography is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

1 ***Criminal Code 1995 (Commonwealth of Australia)***

2 **474.22 Using a carriage service for child abuse material**

3 (1) A person is guilty of an offence if:

4 (a) the person:

5 (i) accesses material; or

6 (ii) causes material to be transmitted to himself or herself; or

7 (iii) transmits, makes available, publishes, distributes, advertises or promotes  
8 material; or

9 (iv) solicits material; and

10 (aa) the person does so using a carriage service; and

11 (b) the material is child abuse material.

12 Penalty: Imprisonment for 15 years.

**ATTACHMENT B**

**ACCOUNTS TO BE SEARCHED**

The electronically stored information and communications contained in, related to, and associated with, including all preserved data associated with the MSN Hotmail: yourmaster@live.com.au including any and all information related to Microsoft preservation record number GCC-343706-1TL197 for this account, as well as all other subscriber and log records associated with the account, which are located at premises owned, maintained, controlled or operated by MSN Hotmail, an e-mail provider headquartered at Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.

**ATTACHMENT C**  
**ITEMS TO BE SEIZED**

**I. Items to be to be Provided by MSN Hotmail, for search:**

All electronically stored information and communications contained in, related to, yourmaster@live.com.au for the time period of the May 1, 2009, through December 1, 2012, including the following:

1. All subscriber records associated with the specified account, including (1) name; (2) address; (3) records of session times; (4) length of service (including start date) and types of services utilized; (5) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address such as internet protocol address; (6) account log files (login IP address, account activation IP address, and IP address history); (7) detailed billing records/logs; (8) means and source of payment; and (9) lists of all related accounts;
2. all e-mail content;
3. all account information;
4. all profile information;
5. all contact lists;
6. all calendar content;
7. all MSN Messenger content;
8. all SkyDrive content including photographs, documents, spreadsheets or other content;
9. any records of communications between MSN Hotmail, and any other person about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users about the specified account. This to include records of contacts between the subscriber and the provider's support services, as well as records of any actions taken by the provider or subscriber as a result of the communications.

1  
2 **II. Items to be Seized**

3 From all electronically stored information and communications contained in,  
4 related to, and associated with, including all preserved data associated with, the MSN  
5 Hotmail account, all information described below that constitutes fruits, evidence, and  
6 instrumentalities of violations of Australian criminal law; specifically, incest, contrary to  
7 section 44 of the *Crimes Act 1958* (Victoria) (the Crimes Act); sexual penetration of a  
8 child under the age of 16, contrary to section 45 of the Crimes Act; indecent assault with  
9 a minor under the age of 16, contrary to section 47 of the Crimes Act; production of child  
10 pornography, contrary to section 68 of the Crimes Act; and using a carriage service for  
11 child abuse material contrary to section 474.22 of the *Criminal Code 1995*  
12 (Commonwealth of Australia) or identifier listed on Attachment A, including all records  
13 relating to the identity of the subscriber to the e-mail account, other subscriber  
14 identification details provided at user registration, and account content, including, but not  
15 limited to:

- 16 (a) name, address, and telephone numbers;  
17 (b) the IP address(es) from which the subscriber to the e-mail account  
18 connected to the e-mail servers and sent e-mails;  
19 (c) all chat records relating to the e-mail account;  
20 (d) contents of any address books;  
21 (e) any filed, saved or recoverable e-mails held within the account,  
22 including information contained in the e-mail headers as well as the  
23 body of the message and any attachments; and  
24 (f) any photos and videos located on the e-mail account.  
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**EXHIBIT 1****IN THE MATTER OF THE  
FOREIGN EVIDENCE ACT 1994****Affidavit**

I, \_\_\_\_\_, based on my personal knowledge and in my capacity as an employee of Microsoft Corporation ("Microsoft"), affirm as follows:

1. I am over 21 years of age, and make this affidavit based on my knowledge of the following facts. I am a Custodian of Records for Microsoft, which is a publicly-listed, U.S. company located at One Microsoft Way, Redmond, Washington 98052. My duties as a Custodian of Records include responding to requests from law enforcement for customer data relating to Microsoft online services, including Microsoft Windows Live ID (the service used by Microsoft to authenticate account access by matching the account name with the user-generated password), MSN Hotmail (a free, web-based e-mail service) and Windows Live Instant Messenger (a free instant messaging service). These duties include making and keeping the records attached to this affidavit labeled "Attachment A." These responsibilities require me to be familiar with the practices and procedures for record management and storage of information relating to online services at Microsoft.

2. Microsoft logs and stores, as electronic records, certain account-related data in the regular course of business, including the records attached to this affidavit labeled "Attachment A." Creation and storage of such records, when they occur, happen automatically and contemporaneously with related user or system activity. These electronic business records are kept in the ordinary course of business. The user's account information, including logs, is stored on Microsoft servers located in the United States. When a user logs into his or her Windows Live ID account (the service used by Microsoft to authenticate account access), regardless of the log-in location, account information is retrieved and accessed from servers owned by Microsoft.

3. On or about \_\_\_\_\_, Microsoft received a search warrant from the Department of Homeland Security, Seattle, Washington, seeking certain records pertaining to the Hotmail account(s) – <yourmaster@live.com.au>. On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I conducted a search of the records of Microsoft relating to the account(s) – <yourmaster@live.com.au>. The following records attached to this affidavit are the documents retrieved as a result of this search:

1 [The information in this section would depend on the particular request and, as a  
2 result, what was produced, for example:

- 3 • Hotmail / Windows LIVE Mail subscriber profile.  
4 • Hotmail / Windows LIVE Mail IP History connection log.  
5 • Hotmail / Windows LIVE Mail / MSN Contacts Service Address Book. ]

6 4. "Attachment A" is a CD-ROM made from a computer that is used regularly to  
7 create, store and produce records retained by Microsoft, and which, to the best of my  
8 knowledge, produces accurate and reliable records. (See appendix A for a photocopied  
9 image of the CD-ROM of the disclosed data (Page ^x^ of ^y^)).

10 \_\_\_\_\_  
11 Microsoft Online Services Custodian of Records  
12 Microsoft Corporation  
13  
14

15 Affirmed at:

16 Mountain View, California, U.S.A.

17 on

18 before me:  
19  
20  
21

22 \_\_\_\_\_  
(signature of officer authorized to administer an oath or affirmation, before whom the  
23 affidavit is made)  
24

25 \_\_\_\_\_  
(name and title of person authorized to administer an oath or affirmation)  
26  
27  
28



**Appendix A**

*Photocopied image of CD ROM containing data for account(s) -  
<yourmaster@live.com.au>.*



2. I make this affidavit in support of an application for a search warrant for information associated with an account stored at premises owned, maintained, controlled, or operated by MSN Hotmail, an electronic mail ("e-mail") provider headquartered at Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052. The information to be searched is described in the following paragraphs and in Attachment C. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A), 2703(c)(1)(A) and 3512(2)(a) and (b) to require MSN Hotmail to disclose to the government records and other information in its possession pertaining to the subscriber or customer associated with the account, including the contents of communications contained in e-mail account: yourmaster@live.com.au including any and all information related to Microsoft preservation record number GCC-343706-1TL197 for that account, as well as all other subscriber and log records associated with this account.

3. I am requesting a search warrant for the above-referenced account based on a request submitted by Victoria Police pursuant to a Mutual Legal Assistance Treaty ("MLAT") between the governments of Australia and the United States of America. The Victoria Police and the Victoria Office of Public Prosecutions ("OPP") are conducting an investigation and prosecution of Michael Cunningham ("Cunningham") for incest and child pornography offenses. According to the Victoria Police, Cunningham sexually abused his step-daughter, J.C., on an ongoing basis between 2007 and 2011. From May 2009 to December 2012, Cunningham used the above-referenced e-mail account in furtherance of the incest and to transmit child pornography material of the abuse of J.C. I make this request to search the above-referenced account for fruits, evidence and instrumentalities of violations of Australian criminal law; specifically incest, contrary to section 44 of the *Crimes Act 1958* (Victoria) (the Crimes Act); sexual penetration of a child under the age of 16, contrary to section 45 of the Crimes Act; indecent assault with a minor under the age of 16, contrary to section 47 of the Crimes Act; production of child pornography, contrary to section 68 of the Crimes Act; and using a carriage service for

1 child abuse material contrary to section 474.22 of the *Criminal Code* 1995  
2 (Commonwealth of Australia) as further described in Attachment A.

3 4. The facts set forth in this Affidavit are based on knowledge I have obtained  
4 from the MLAT request submitted by the Victoria Police to the United States Department  
5 of Justice and which have been confirmed as accurate by the Victoria Police case officer.

6 **SUMMARY OF THE INVESTIGATION**

7 5. Beginning in or around 2007, Cunningham, born October 14, 1964, began  
8 sexually abusing his step-daughter, J.C. In a statement to Victoria Police, J.C. described  
9 the abuse as commencing when she was 13 years old. According to J.C., the initial abuse  
10 began with Cunningham kissing and touching J.C.'s genitals outside her clothing and  
11 escalated into a full sexual relationship, in which Cunningham, on multiple occasions,  
12 forced J.C., who was under the age of 16, to engage in sexual acts.

13 6. In February, 2012, J.C. told Victoria Police that Cunningham photographed  
14 many of the sexual acts he forced J.C. to perform on him. Those images were uploaded  
15 to the adult pornography website known as "Fantasti." J.C. told Victoria Police that she  
16 became aware that Cunningham was uploading images to the Fantasti website after J.C.  
17 received multiple e-mails starting from 2009, from the e-mail address  
18 yourmaster@live.com.au. J.C. confronted Cunningham about the e-mails and he  
19 admitted the e-mails were from him and he asked J.C. to save the  
20 yourmaster@live.com.au e-mail address to her Outlook mailbox folder.

21 7. The e-mail address yourmaster@live.com.au was the e-mail account used  
22 to create the Fantasti website account and it was used by Cunningham and J.C. to reply to  
23 messages from other users of the Fantasti website. For example, Cunningham would ask  
24 other Fantasti website users for suggestions of sexual poses or acts they wanted to see  
25 J.C. perform. Thereafter, Cunningham forced J.C. to act out the requests while  
26 Cunningham photographed the acts, then sent himself the photographs via the  
27  
28

1 yourmaster@live.com.au e-mail account, and ultimately uploaded the photographs to the  
2 Fantasti website.

3 8. Cunningham also used the yourmaster@live.com.au e-mail address to send  
4 messages to J.C. The e-mails contained explicit messages sent from Cunningham to J.C.  
5 such as "Wanna fuck?", "Tell me when it's safe to come down and play", "I feel naughty,  
6 do you want to [se]e the naught that I feel?", and "I want to run my tongue between your  
7 lips."

8 9. Cunningham directed J.C. to send him explicit images of herself via the  
9 yourmaster@live.com.au e-mail address. The images depicted J.C. posing nude in  
10 varying sexual positions and on occasions with various items inserted into her vagina.  
11 Many of these images were eventually uploaded to the Fantasti website. Cunningham  
12 told J.C. that the yourmaster@live.com.au was linked to the Fantasti account and J.C.  
13 could access the Fantasti website account using the yourmaster@live.com.au e-mail  
14 account. Cunningham later instructed J.C. to join the Fantasti website and upload  
15 photographs of herself and to use the yourmaster@live.com.au e-mail address to reply to  
16 messages sent from other Fantasti website users who commented on the photographs of  
17 J.C.

18 10. J.C. told Victoria Police that the Fantasti website username was  
19 myslutypics and the password was automated through her Outlook mailbox using the  
20 yourmaster@live.com.au e-mail address. The yourmaster@live.com.au e-mail address  
21 had a username of Master X and Cunningham provided J.C. the password to the  
22 yourmaster@live.com.au e-mail account so she was able to reply to messages via the  
23 Fantasti website.

24 11. J.C. told Victoria Police that the images posted to the myslutypics profile  
25 on the Fantasti website included photos of J.C. clothed and unclothed in sexual positions  
26 and performing sexual acts on Cunningham. The photos were taken when J.C. was  
27 approximately 15 years old. Cunningham instructed J.C. to sit on a dining room chair  
28 where he handcuffed J.C.'s hands behind the back of the chair, put the collar around her

1 neck, and forced her to perform oral sex on him. Cunningham then undressed J.C. and  
 2 had sexual intercourse with her while she was bound to the chair. Cunningham took  
 3 photographs of J.C. whilst she was handcuffed to the chair with the collar and leash  
 4 around her neck. Thereafter, Cunningham bent J.C. over the kitchen table and had  
 5 sexual intercourse with her whilst the collar and leash were attached to her neck and the  
 6 other end of the leash was attached to a chair. During the act of sexual intercourse,  
 7 Cunningham photographed J.C. Ultimately, Cunningham ejaculated on J.C.'s face and  
 8 took photographs of J.C. naked, handcuffed to the chair with semen on her face. The  
 9 photographs were uploaded to the Fantasti website. J.C. saw the photographs on the  
 10 Fantasti website and copied them to a USB drive that she later provided to Victoria  
 11 Police.

12 12. On February 9, 2012, J.C.'s brother discovered the abuse after viewing  
 13 Cunningham's comments on J.C.'s Facebook page about having sexual intercourse in a  
 14 car wash. Shortly thereafter, Cunningham sent J.C. several messages using the  
 15 yourmaster@live.com.au e-mail account. The messages included:

16 J.C.: *'Michael. Brandon saw the messages you left me on Facebook. I*  
 17 *left my account logged in on my user and he didn't realise until he saw*  
 18 *the inbox messages.'*

19 Cunningham: *'and you said?, what do u think he will say?'*

20 J.C.: *'He started asking questions, about whether this has happened*  
 21 *before, about why youre always texting me, always in my room when im*  
 22 *at home.'*

23 Cunningham: *'I'll tell mum I accidentally sent you msgs instead of her, is*  
 24 *that all he read?, how much was on there?'*

25 Cunningham: *'Why arent they cleared?, so what have you done to your*  
 26 *computer now?, what are you going to do wipe everything?'*

27 13. On February 23, 2012, Victoria Police conducted a search of Cunningham's  
 28 residence during which multiple computers were seized. Victoria Police conducted a  
 forensic analysis of the computers and identified Facebook, Skype, and social media



1 chats, such as Windows Live Messenger Chat, between Cunningham and J.C. which  
 2 support the allegations of ongoing abuse. For example, in a Windows Live Messenger  
 3 Chat from in or around 2011, Cunningham sent the following message to J.C.:

4 *"Wanna be naughty?, Oh and so his cock is thin but long to get right*  
 5 *down your throat?, Ok I knew what you meant lol so can you see ya self*  
 6 *fucking both of us on reg basis hehe? I like my dick? Hehe, Inside you*  
 7 *mmm."*

8 14. Based on the foregoing, the Victoria Police believe that records relating to  
 9 the e-mail account yourmaster@live.com.au will provide evidence of Cunningham's  
 10 abuse of J.C. and his transmission and sharing of child pornography.

11 **PROBABLE CAUSE THAT E-MAIL ACCOUNTS WILL CONTAIN EVIDENCE,  
 12 FRUITS AND INSTRUMENTALITIES OF THE CRIMES DESCRIBED**

13 15. As shown above, the e-mail account that is the subject of the current  
 14 warrant application has been used in relation to the illegal activities that the Victoria  
 15 Police is investigating. Therefore, there is probable cause that these accounts have been  
 16 used in furtherance of the acts of incest and to transmit child pornography material on a  
 17 number of occasions.

18 16. In my training and experience, I have learned that MSN Hotmail provides a  
 19 variety of on-line services, including e-mail access, to the general public. MSN Hotmail  
 20 allows subscribers to obtain e-mail accounts at the domain name live.com.au, like the e-  
 21 mail account listed in Attachment B. Subscribers obtain an account by registering with  
 22 MSN Hotmail. During the registration process, MSN Hotmail asks subscribers to  
 23 provide basic personal information. Therefore, the computers of MSN Hotmail are likely  
 24 to contain stored electronic communications (including retrieved and un-retrieved e-mail  
 25 for MSN Hotmail subscribers) and information concerning subscribers and their use of  
 26 MSN Hotmail services, such as account access information, e-mail transaction  
 27 information, and account application information.

28 17. In general, an e-mail that is sent to a MSN Hotmail subscriber is stored in  
 the subscriber's "Inbox" on MSN Hotmail servers until the subscriber deletes the e-mail.

1 If the subscriber does not delete the message, the message can remain on MSN Hotmail's  
2 servers indefinitely. Even if the subscriber deletes the e-mail, it may continue to be  
3 available on MSN Hotmail's servers for a certain period of time in the "Deleted" folder  
4 on the user's account.

5 18. When the subscriber sends an e-mail, it is initiated at the user's computer,  
6 transferred via the Internet to MSN Hotmail's servers, and then transmitted to its end  
7 destination. MSN Hotmail often saves a copy of the e-mail sent in the user's "sent"  
8 folder. Unless the sender of the e-mail specifically deletes the e-mail from the MSN  
9 Hotmail server, the e-mail can remain on the system indefinitely. Even if the sender  
10 deletes the e-mail, it may continue to be available on MSN Hotmail's servers for a certain  
11 period of time.

12 19. A sent or received e-mail typically includes the content of the message,  
13 source and destination addresses, the date and time at which the e-mail was sent, and the  
14 size and length of the e-mail. If an e-mail user writes a draft message but does not send  
15 it, that message may also be saved by MSN Hotmail in the user's "Drafts" folder, but  
16 may not include all of these categories of data.

17 20. An MSN Hotmail subscriber can also store files, including e-mails, address  
18 books, contact or buddy lists, calendar data, photographs, and other files, on servers  
19 maintained and/or owned by MSN Hotmail. In this case, it appears the target of the  
20 Victoria Police investigation is communicating with the abuse victim and sending  
21 photographs using his MSN Hotmail account and, therefore, it is likely such photographs  
22 and communications will be found contained in the account.

23 21. Subscribers to MSN Hotmail might not store on their home computers  
24 copies of the e-mails stored in their MSN Hotmail account. This is particularly true when  
25 they access their MSN Hotmail account through the web, or if they do not wish to  
26 maintain particular e-mails or files in their residence. An MSN Hotmail user may sign on  
27 to their account from any computer at any location and access the data and e-mail content  
28 contained in their account.



1           22. In general, e-mail providers like MSN Hotmail ask each of their subscribers  
2 to provide certain personal identifying information when registering for an e-mail  
3 account. This information can include the subscriber's full name, physical address,  
4 telephone numbers and other identifiers, alternative e-mail addresses, and, for paying  
5 subscribers, means and source of payment (including any credit or bank account number).

6           23. E-mail providers typically retain certain transactional information about the  
7 creation and use of each account on their systems. This information can include the date  
8 on which the account was created, the length of service, records of log-in (i.e., session)  
9 times and durations, the types of service utilized, the status of the account (including  
10 whether the account is inactive or closed), the methods used to connect to the account  
11 (such as logging into the account via MSN Hotmail's website), and other log files that  
12 reflect usage of the account. In addition, e-mail providers often have records of the  
13 Internet Protocol address ("IP address") used to register the account and the IP addresses  
14 associated with particular logins to the account. Because every device that connects to  
15 the Internet must use an IP address, IP address information can help to identify which  
16 computers or other devices were used to access the e-mail account.

17           24. In some cases, e-mail account users will communicate directly with an e-  
18 mail service provider about issues relating to the account, such as technical problems,  
19 billing inquiries, or complaints from other users. E-mail providers typically retain  
20 records about such communications, including records of contacts between the user and  
21 the provider's support services, as well records of any actions taken by the provider or  
22 user as a result of the communications.

23           25. In my training and experience, evidence of who was using an e-mail  
24 account may be found in address books, contact or buddy lists, e-mail in the account, and  
25 attachments to e-mails, including photographs and files.

26           **PROTOCOL FOR SORTING SEIZABLE ELECTRONICALLY STORED**  
27           **INFORMATION**  
28

1       26. In order to insure that agents are limited in their search only to the e-mail  
2 account identified in Attachment B (and any electronically stored information and  
3 communications contained in, related to, and associated with, including all preserved data  
4 associated with the account); in order to protect the privacy interests of other third parties  
5 who have accounts at MSN Hotmail; and in order to minimize disruptions to normal  
6 business operations of MSN Hotmail; this application seeks authorization to permit  
7 agents and employees of MSN Hotmail to assist in the execution of the warrant, as  
8 follows: (*See*: Title 18, United States Code, Section 2703(g)).

9           a. The search warrant will be presented to MSN Hotmail, with  
10 direction that it identify and isolate the e-mail account and associated records described  
11 in Section I of Attachment C.

12           b. MSN Hotmail will also be directed to create an exact duplicate in  
13 electronic form of the e-mail account and records specified in Section I of Attachment C,  
14 including an exact duplicate of the content of all e-mail messages stored in the specified  
15 e-mail account.

16           c. MSN Hotmail shall then provide an exact digital copy of the  
17 contents of the subject e-mail account, as well as all other records associated with the  
18 accounts, to me, or to any other agent of Department of Homeland Security. Once the  
19 digital copy has been received from MSN Hotmail, that copy will, in turn, be forensically  
20 copied/duplicated. Upon review by the Department of Homeland Security, any  
21 communications or data identified that are not subject to seizure pursuant to Section II of  
22 Attachment C will be removed by the Department of Homeland Security. The original  
23 complete digital copy will be maintained and secured.

24           d. Analyzing the data contained in the forensic image may require  
25 special technical skills, equipment, and software. It could also be very time-consuming.  
26 Searching by keywords, for example, can yield thousands of "hits," each of which must  
27 then be reviewed in context by the examiner to determine whether the data is within the  
28

1 scope of the warrant. Merely finding a relevant "hit" does not end the review process.  
2 Keywords used originally need to be modified continuously, based on interim results.  
3 Certain file formats, moreover, do not lend themselves to keyword searches, as keywords  
4 search text, and many common e-mail, database, and spreadsheet applications, (which  
5 may be attached to e-mail,) do not store data as searchable text. The data is saved,  
6 instead, in proprietary non-text format. And, as the volume of storage allotted by service  
7 providers increases, the time it takes to properly analyze recovered data increases, as  
8 well. Consistent with the foregoing, searching the recovered data for the information  
9 subject to seizure pursuant to this warrant may require a range of data analysis techniques  
10 and may take weeks or even months.

11 e. Based upon my experience and training, and the experience and  
12 training of other agents with whom I have communicated, it is necessary to seize all e-  
13 mails, photographs and documents, that identify any users of the subject account and any  
14 e-mails sent or received in temporal proximity to incriminating e-mails that provide  
15 context to the incriminating communications.

16 f. All forensic analysis of the image data will employ only those search  
17 protocols and methodologies reasonably designed to identify and seize the items  
18 identified in Section II of Attachment C to the warrant.  
19

## 20 CONCLUSION

21 27. Based on the forgoing, I request that the Court issue the proposed search  
22 warrant. This Court has jurisdiction to issue the requested warrant because it is "a court  
23 of competent jurisdiction" as defined by 18 U.S.C. § 2711, 18 U.S.C. §§ 2703(a),  
24 (b)(1)(A) & (c)(1)(A). Specifically, the Court "is in the Western District of Washington,  
25 a district in which the provider MSN Hotmail, headquartered at the Microsoft  
26 Corporation is located or in which the wire or electronic communications, records, or  
27 other information are stored." 18 U.S.C. § 2711(3)(A)(ii) and "is acting on a request for  
28 foreign assistance pursuant to 18 U.S.C. § 3512." 18 U.S.C. § 2711(3)(A)(iii). Pursuant

1 to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the  
2 service or execution of this warrant.

### 4 REQUEST FOR NONDISCLOSURE AND SEALING

5 28. The government requests, pursuant to the preclusion of notice provisions of  
6 Title 18, United States Code, Section 2705(b), that MSN Hotmail be ordered not to notify  
7 any person (including the subscriber or customer to which the materials relate) of the  
8 existence of this warrant for such period as the Court deems appropriate. The  
9 government submits that such an order is justified because notification of the existence of  
10 this Order would seriously jeopardize the ongoing investigation. Such a disclosure would  
11 give the subscriber an opportunity to destroy evidence, change patterns of behavior,  
12 notify confederates, or flee or continue his flight from prosecution.

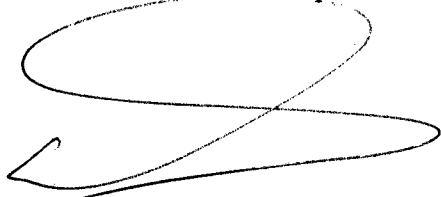
13 29. It is further respectfully requested that this Court issue an order sealing,  
14 until further order of the Court, all papers submitted in support of this application,  
15 including the application and search warrant. I believe that sealing this document is  
16 necessary because of the nature of the criminal activity and the age of the victim.

### 17 CERTIFICATION

18 30. I further request that any results generated by MSN Hotmail be certified in  
19 a manner that would make them admissible in a potential future Australian court  
20 proceeding. Australian law permits the introduction into evidence of records created in  
21 the usual and ordinary course of business of an entity located in a foreign jurisdiction, if  
22 they are accompanied by explanatory documents setting out basic information about the  
23 institution where the records were generated, and the record itself. An affidavit  
24 conforming to the requirements is attached hereto as Exhibit 1. It is requested that MSN  
25 Hotmail complete this document when providing the requested information.

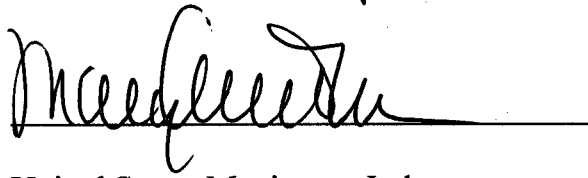
### 26 CONCLUSION

31. Based on the forgoing, I request that the Court issue the proposed search warrant. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court "is in Western District of Washington a district in which the provider .MSN Hotmail, headquartered at the Microsoft Corporation is located or in which the wire or electronic communications, records, or other information are stored." 18 U.S.C. § 2711(3)(A)(ii) and "is acting on a request for foreign assistance pursuant to 18 U.S.C. § 3512." 18 U.S.C. § 2711(3)(A)(iii). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.



Cao Triet (Dan) Huynh  
Special Agent  
Department of Homeland Security

SUBSCRIBED and SWORN to before me this 6 day of Sept 2013.



United States Magistrate Judge

ATTACHMENT A

OFFENCE PROVISIONS

*Crimes Act 1958 (Victoria)*

**44. Incest**

(1) A person must not take part in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child.

Penalty: Level 2 imprisonment (25 years maximum).

(2) A person must not take part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant or the step-child of his or her de facto spouse. Penalty: Level 2 imprisonment (25 years maximum).

**45. Sexual penetration of child under the age of 16**

(1) A person who takes part in an act of sexual penetration with a child under the age of 16 is guilty of an indictable offence.

(2) A person who is guilty of an offence against subsection (1) is liable-

(a) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 12, to level 2 imprisonment (25 years maximum); or

(b) if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 12 and 16 and under the care, supervision or authority of the accused, to level 4 imprisonment (15 years maximum); or

(c) in any other case of sexual penetration of a child between the ages of 12 and 16, to level 5 imprisonment (10 years maximum).

**47. Indecent act with child under the age of 16**

(1) A person must not wilfully commit, or wilfully be in any way a party to the commission of, an indecent act with or in the presence of a child under the age of 16 to whom he or she is not married. Penalty: Level 5 imprisonment (10 years maximum).

**68. Production of child pornography**

(1) A person who prints or otherwise makes or produces child pornography is guilty of an indictable offence punishable on conviction by level 5 imprisonment (10 years maximum).

1 ***Criminal Code 1995 (Commonwealth of Australia)***

2 **474.22 Using a carriage service for child abuse material**

3 (1) A person is guilty of an offence if:

4 (a) the person:

5 (i) accesses material; or

6 (ii) causes material to be transmitted to himself or herself; or

7 (iii) transmits, makes available, publishes, distributes, advertises or promotes  
8 material; or

9 (iv) solicits material; and

10 (aa) the person does so using a carriage service; and

11 (b) the material is child abuse material.

12 Penalty: Imprisonment for 15 years.



**ATTACHMENT B**

**ACCOUNTS TO BE SEARCHED**

The electronically stored information and communications contained in, related to, and associated with, including all preserved data associated with the MSN Hotmail: yourmaster@live.com.au including any and all information related to Microsoft preservation record number GCC-343706-1TL197 for this account, as well as all other subscriber and log records associated with the account, which are located at premises owned, maintained, controlled or operated by MSN Hotmail, an e-mail provider headquartered at Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.



**ATTACHMENT C**  
**ITEMS TO BE SEIZED**

**I. Items to be to be Provided by MSN Hotmail, for search:**

All electronically stored information and communications contained in, related to, yourmaster@live.com.au for the time period of the May 1, 2009, through December 1, 2012, including the following:

1. All subscriber records associated with the specified account, including (1) name; (2) address; (3) records of session times; (4) length of service (including start date) and types of services utilized; (5) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address such as internet protocol address; (6) account log files (login IP address, account activation IP address, and IP address history); (7) detailed billing records/logs; (8) means and source of payment; and (9) lists of all related accounts;
2. all e-mail content;
3. all account information;
4. all profile information;
5. all contact lists;
6. all calendar content;
7. all MSN Messenger content;
8. all SkyDrive content including photographs, documents, spreadsheets or other content;
9. any records of communications between MSN Hotmail, and any other person about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users about the specified account. This to include records of contacts between the subscriber and the provider's support services, as well as records of any actions taken by the provider or subscriber as a result of the communications.

1  
2 **II. Items to be Seized**

3 From all electronically stored information and communications contained in,  
4 related to, and associated with, including all preserved data associated with, the MSN  
5 Hotmail account, all information described below that constitutes fruits, evidence, and  
6 instrumentalities of violations of Australian criminal law; specifically, incest, contrary to  
7 section 44 of the *Crimes Act 1958* (Victoria) (the Crimes Act); sexual penetration of a  
8 child under the age of 16, contrary to section 45 of the Crimes Act; indecent assault with  
9 a minor under the age of 16, contrary to section 47 of the Crimes Act; production of child  
10 pornography, contrary to section 68 of the Crimes Act; and using a carriage service for  
11 child abuse material contrary to section 474.22 of the *Criminal Code 1995*  
12 (Commonwealth of Australia) or identifier listed on Attachment A, including all records  
13 relating to the identity of the subscriber to the e-mail account, other subscriber  
14 identification details provided at user registration, and account content, including, but not  
15 limited to:

- 16 (a) name, address, and telephone numbers;  
17 (b) the IP address(es) from which the subscriber to the e-mail account  
18 connected to the e-mail servers and sent e-mails;  
19 (c) all chat records relating to the e-mail account;  
20 (d) contents of any address books;  
21 (e) any filed, saved or recoverable e-mails held within the account,  
22 including information contained in the e-mail headers as well as the  
23 body of the message and any attachments; and  
24 (f) any photos and videos located on the e-mail account.  
25  
26  
27  
28

**EXHIBIT 1****IN THE MATTER OF THE  
FOREIGN EVIDENCE ACT 1994****Affidavit**

I, \_\_\_\_\_, based on my personal knowledge and in my capacity as an employee of Microsoft Corporation ("Microsoft"), affirm as follows:

1. I am over 21 years of age, and make this affidavit based on my knowledge of the following facts. I am a Custodian of Records for Microsoft, which is a publicly-listed, U.S. company located at One Microsoft Way, Redmond, Washington 98052. My duties as a Custodian of Records include responding to requests from law enforcement for customer data relating to Microsoft online services, including Microsoft Windows Live ID (the service used by Microsoft to authenticate account access by matching the account name with the user-generated password), MSN Hotmail (a free, web-based e-mail service) and Windows Live Instant Messenger (a free instant messaging service). These duties include making and keeping the records attached to this affidavit labeled "Attachment A." These responsibilities require me to be familiar with the practices and procedures for record management and storage of information relating to online services at Microsoft.

2. Microsoft logs and stores, as electronic records, certain account-related data in the regular course of business, including the records attached to this affidavit labeled "Attachment A." Creation and storage of such records, when they occur, happen automatically and contemporaneously with related user or system activity. These electronic business records are kept in the ordinary course of business. The user's account information, including logs, is stored on Microsoft servers located in the United States. When a user logs into his or her Windows Live ID account (the service used by Microsoft to authenticate account access), regardless of the log-in location, account information is retrieved and accessed from servers owned by Microsoft.

3. On or about \_\_\_\_\_, Microsoft received a search warrant from the Department of Homeland Security, Seattle, Washington, seeking certain records pertaining to the Hotmail account(s) – <yourmaster@live.com.au>. On the \_\_\_\_\_ day of \_\_\_\_\_, I conducted a search of the records of Microsoft relating to the account(s) – <yourmaster@live.com.au>. The following records attached to this affidavit are the documents retrieved as a result of this search:

[The information in this section would depend on the particular request and, as a result, what was produced, for example:

- Hotmail / Windows LIVE Mail subscriber profile.
- Hotmail / Windows LIVE Mail IP History connection log.
- Hotmail / Windows LIVE Mail / MSN Contacts Service Address Book. ]

4. "Attachment A" is a CD-ROM made from a computer that is used regularly to create, store and produce records retained by Microsoft, and which, to the best of my knowledge, produces accurate and reliable records. (See appendix A for a photocopied image of the CD-ROM of the disclosed data (Page ^x^ of ^y^)).

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Microsoft Online Services Custodian of Records  
Microsoft Corporation

Affirmed at:

*Redmond, Washington*  
~~Mountain View, California~~, U.S.A.  
on

before me:

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(signature of officer authorized to administer an oath or affirmation, before whom the affidavit is made)

---

(name and title of person authorized to administer an oath or affirmation)

**Appendix A**

*Photocopied image of CD ROM containing data for account(s) -  
<yourmaster@live.com.au>.*